Introduced by Assembly Member Correa

February 19, 2003

An act to add Section 11106.7 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 709, as introduced, Correa. Controlled substances: business permittees: citation system.

Existing law requires that any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes specified chemical substances to a person in this state or who obtains from a source outside of the state specified chemical substances submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. Existing law provides that an application may be denied, or a permit may be revoked or suspended, for specified reasons, and that selling, transferring, or otherwise furnishing or obtaining the specified chemical substances without a permit is a misdemeanor or a felony. Existing law further provides a procedure pursuant to which the Bureau of Narcotic Enforcement may, upon petition, issue an interim order suspending any permittee or imposing permit restrictions if there is evidence that the permittee engaged in acts or omissions constituting a violation of the Health and Safety Code or has been convicted of a crime substantially related to the permitted activity, or that permitting the permittee to operate, or to continue to operate without restrictions, would endanger the public health, safety, or welfare.

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This bill would, in addition, authorize the Department of Justice to establish, by regulation, a system for the issuance to a permittee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the department not exceeding \$2,500, if the permittee is in violation of any law or regulation, as specified. The permittee would have an opportunity to request a hearing or an informal conference to contest any citation, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11106.7 is added to the Health and 2 Safety Code, to read:

11106.7. (a) The Department of Justice may establish, by regulation, a system for the issuance to a permittee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the Department of Justice, if the permittee is in violation of any law or any regulation adopted by the Department of Justice pursuant to that law.

- (b) The system shall contain the following provisions:
- (1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law or regulation of the department determined to have been violated.
- (2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.
- (3) In no event shall the administrative fine assessed by the department exceed two thousand five hundred dollars (\$2,500) for each violation. In assessing a fine, due consideration shall be given to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the permittee, and the history of previous violations.
- (4) An order of abatement or a fine assessment issued pursuant to a citation shall inform the permittee that if the permittee desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the department within 30 days of the date of issuance of the citation or assessment. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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(5) In addition to requesting a hearing, the permittee may, within 10 days after service of the citation, request in writing an opportunity for an informal conference with the department regarding the citation. At the conclusion of the informal conference, the department may affirm, modify, or dismiss the citation, including any fine levied or order of abatement issued. The decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement. However, the permittee does not waive its right to request a hearing to contest a citation by requesting an informal conference. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for a subsequent citation, it shall be requested within 30 days of service of that subsequent citation.

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- (6) Failure of a permittee to pay a fine within 30 days of the date of assessment or comply with an order of abatement within the fixed time, unless the citation is being appealed, may result in disciplinary action being taken by the department. If a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the renewal of the permit. A permit shall not be renewed without payment of the renewal fee and fine.
 - (c) The system may contain the following provisions:
- (1) A citation may be issued without the assessment of an administrative fine.
- (2) Assessment of administrative fines may be limited to only particular violations of the law or department regulations.
- (d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.
- (e) Administrative fines collected pursuant to this section shall be deposited in the General Fund.
- (f) The sanctions authorized under this section shall be separate from, and in addition to, any other administrative, civil, or criminal remedies.
- (g) Nothing in this section shall be deemed to prevent the department from serving and prosecuting an accusation to suspend

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- 1 or revoke a permit if grounds for that suspension or revocation 2 exist.